

REMARKS

Claims 2-8, 11-22, 24-47, and 54-55 and 58-61 remain pending. Claims 1, 9-10, 23, and 48-53 were canceled by previous amendments. Claims 56-57 were mis-numbered as claims 58-59, respectively. No new claims are added.

I. THE OFFICE ACTION SUMMARY IS INCORRECT

The Office Action Summary erroneously identifies claims 2-8, 11, 54-55, and 58-61 as being pending. It further lists claims "2-8, 11-4 [sic], 54, 55 and 58-61" as being rejected. Applicants note that in fact claims **2-8, 11-22, 24-47, and 54-55 and 58-61** are still pending. With the exception of claim 35, the Office Action addresses each of the pending claims, notwithstanding the Summary sheet. A summary of the rejected claims and the basis for each rejection provided in the Office Action follows:

Claim	Reference(s)	Basis for Rejection
2	Arndt, Goshke	102(b)
3-8	Goshke	103(a)
11	Arndt	102(b)
12	Arndt	102(b)
13-15	Goshke	103(a)
16	Goshke	102(b)
17-20	Goshke	103(a)
21	Goshke	102(b)
22	Goshke	102(b)
24	Goshke	102(b)
25	Arndt	102(b)
26-28	Goshke	103(a)
29	Goshke	102(b)
30	Goshke	103(a)
31	Arndt, Goshke	102(b)
32-34	Goshke	103(a)
35	?	?
36-37	Goshke	103(a)
38	Goshke	102(b)
39-47, 54-55, 58-61	Goshke	103(a)

II. THE OBJECTION TO THE INFORMATION DISCLOSURE STATEMENT IS MISPLACED

The Office Action indicated that the Information Disclosure Statement filed on October 3, 2005, fails to comply with 37 C.F.R. § 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. The Examiner placed it in the application file but refused to consider the information therein.

Applicants respectfully submit that the Information Disclosure Statement was properly filed and does in fact comply with 37 C.F.R. § 1.98(a)(2). **Applicants direct the Examiner to PAIR, which clearly shows that 8 foreign patent references were received by the Patent Office and scanned into PAIR.** Indeed, the Examiner actually initialed seven of the eight references and attached an initialed copy of the PTO-Form 1449 to the Final Office Action. The Examiner refused to initial the reference DE 199 54 880 C1 because no English translation was provided. However, Applicants actually submitted an English Abstract of DE 199 54 880 C1 in a PTO-Form 1449 submitted with their Third Information Disclosure Statement, which was received on November 21, 2002, and initialed and considered by the Examiner on October 28, 2003, and attached with an Office Action dated December 12, 2003.

In the next Office communication, Applicants request that the Examiner withdraw the objection the Information Disclosure Statement filed on October 3, 2005, as clear, legible copies of foreign references were clearly submitted and even initialed by the Examiner.

III. APPLICANTS HAVE BEEN PREJUDICED BY THE EXAMINER'S RENEWED REJECTION BASED ON GOSCHKE AFTER ABANDONING THAT REFERENCE

In an Office Action dated December 12, 2003, the Examiner rejected claims 1-2, 9-10, 12-13, 15-16, 20-25, 31, 35-36, and 42-44 under Section 102(b) in view of U.S. Patent No. 4,854,415 (Goschke). The Examiner also rejected claims 3-8, 14, 17-19, 26-27, 29-30, 32-34, 38-41, and 45-46 under Section 103(a) in view of Goschke. The Examiner attached a PTO-Form 892 listing Goschke as a cited reference. Applicants explained how the pending claims were patentable over Goschke.

In a Final Office Action dated September 28, 2004, the Examiner did not maintain the rejections based on Goschke and instead rejected all pending claims under Sections 102 and 103(a) in view of U.S. Published Patent Application No. 2001/0036289 (Nepomuceno). Applicants explained how the pending claims were patentable over Nepomuceno.

In an Office Action dated June 28, 2005, the Examiner rejected all pending claims under Sections 102(e) and 103(a) in view of U.S. Patent No. 6,751,326 (Nepomuceno). Applicants explained how the pending claims were patentable over Nepomuceno.

In the present Final Office Action, the Examiner has returned to rejecting claims in view of Goschke, and has further rejected claims in view of yet another reference, U.S. Patent No. 5,204,917 (Arndt). Applicants are prejudiced by the Examiner's renewed rejections in view of Goschke, which the Examiner did not maintain in response to Applicants' arguments responding to the December 12, 2003, Office Action.

IV. CLAIM REJECTIONS

A. The Rejections Based on Goschke Should Be Withdrawn

The Examiner initially rejected the claims in an office action dated December 12, 2003, based on Goschke, and attached a Notice of References Cited listing Goschke. In a response dated June 14, 2004, Applicants addressed Goschke at length and how the pending claims were patentable over Goschke.

The MPEP states that "prior art rejections should ordinarily be confined strictly to the best available prior art." Section 706.02. The Patent Rules state that the "examiner's action will be complete **as to all matters**, except that in appropriate circumstances, such as misjoinder of invention, fundamental defects in the application, and the like, the action of the examiner may be limited to such matters before further action is made." 37 C.F.R. § 1.104. The MPEP further provides "in taking up an amended application for action **the examiner should note in every letter all the requirements outstanding against the application.**" Section 707.07(e).

In the Final Office Action dated September 28, 2004, the Examiner did not use any of the form paragraphs 7.37 through 7.38.13 (see MPEP, § 707.07(f)). However, Form Paragraph 7.38 instructs Examiners as follows: "The examiner must, however, address any arguments presented by the applicant **which are still relevant to any references being applied.**"

MPEP Section 707.07(g) states that “**Piecemeal examination should be avoided** as much as possible. The examiner ordinarily should reject each claim on all valid grounds available, avoiding, however, undue multiplication of references.”

Since the initial rejections based on Goschke, Applicants have amended the claims, so it is difficult to understand why the arguments presented in response to the initial rejection were persuasive enough to cause the Examiner not to maintain the rejections based on Goschke, yet apparently now Goschke anticipates the claims which were amended multiple times since the initial Goschke rejection. Applicants submit that the claims now rejected in view of Goschke were patentable over Goschke as argued in the Remarks section by Applicants in the June 14, 2004, Amendment and Response, then as they are now. Applicants repeat and incorporate by reference in their entirety the arguments made with respect to Goschke in their Amendment and Response dated June 14, 2004. Claims 2, 16, 21, 22, 24, 29, 31, and 38 are patentable over Goschke for at least the same reasons presented in that paper.

In the December 12, 2003, Office Action, the Examiner also rejected claims 3-8, 14, 17-19, 26-27, 29-30, 32-34, 38-41, and 45-46 under Section 103(a) in view of Goschke. Many of the same claims are again rejected in the most recent Office Action based on the same reference, despite the fact that the Examiner did not pursue these rejections in Office Actions subsequent to the initial December 12th rejection. Applicants traversed the rejections in the December 12th Office Action, but the Examiner did not, as **mandated** by the MPEP, take note of Applicants’ arguments or answer in any substantive way a single argument previously presented by Applicants regarding these claims. The MPEP states:

When the Applicant traverses **any** rejection, the examiner should, if he or she repeats the rejection, take note of the Applicant’s argument and answer the substance of it.

Section 707.07(f) (emphasis added). Here, the rejection of numerous claims were traversed by Applicants in their Response and Amendment dated June 14, 2004. In response, the Examiner did not maintain any rejection based on Goschke and instead rejected the claims based on the Nepomuceno Publication. The Examiner did not (a) take note of Applicants’ arguments or (b) answer the substance of any of Applicants’ arguments as to Goschke. Applicants respectfully request that the Examiner consider **all** of the arguments presented herein and in the

June 14th Amendment and Response (which is incorporated herein by reference in its entirety) before taking any further action and to place this application properly in a condition for appeal.

B. The Rejected Claims Are Patentable Over Goschke For The Same Reasons Presented In Applicants' Remarks of June 14, 2004

Applicants present herein the same arguments presented on June 14, 2004, as to why the claims rejected under Goschke are patentable thereover. The Examiner MUST in the next official paper respond to these arguments and indicate whether they are persuasive or not persuasive. Applicants also traverse other rejections based on Goschke, and the Examiner in the next official paper MUST respond to Applicants' arguments as to each claim rejection that is traversed, and indicate whether they are persuasive or not persuasive.

Independent **Claims 2, 26, 31, 42, and 54** generally call for a jacket surrounding at least a portion of a housing of a transducer so as to preserve the structural integrity of the transducer and to protect against damage of the internal components of the transducer due to handling when the transducer is installed into a hearing aid or telecommunications system. The jacket also has a thickness and a mass that suppresses undesirable vibrational feedback by the transducer with other working components in the hearing aid or telecommunications system. Goschke, on the other hand, explicitly teaches the very disadvantages Applicants sought to overcome in the present application, and thus the claims as amended are patentable over Goschke.

In the Background section of Applicants' disclosure, Applicants pointed out that in prior art hearing aids and telecommunication devices, the receiver is susceptible to damage during assembly into a hearing aid/telecommunication device such as when the receiver is grasped with tweezers:

In both hearing aids and telecommunication devices, it is important for the receiver to be configured to withstand the forces associated with handling without damaging the housing. These forces can arise through the assembly of the receiver within a hearing aid, **such as when a receiver is grasped with tweezers while it is being positioned** or when force is placed on the housing when electrical connections are being made. Disfiguring the housing can easily occur because the housing material is thin and has a low hardness. One common type of damage is a simple dent that can occur in the housing. Dents can affect not only the electronics within the housing, but they can affect the performance of the acoustical chambers within the receiver. Because the housing of a receiver is typically made of a case and a cover that are made by a drawing technique, dents near the interface of the case and cover can also lead to acoustic leaks at the

interface. Because of the minimal thickness of the material in the housing and a minimal size of the receiver, magnetic and acoustical isolation are limited.

Applicants' disclosure, page 2, lines 9-22 (emphasis added). By contrast, Goschke explicitly teaches that the component parts can be removed from the mount, which the Examiner has identified as corresponding to the claimed jacket:

According to the invention, various component parts, particularly microphone and ear phone, are inserted into box-shaped mounts. The mounts are inwardly cushioned with pillows that are preferably fashioned as nubs of sound-absorbing material. When the component parts are plugged in, the pillows are elastically displaced and retain the component parts in the mount on the basis of elastic clamping power. **With, for example, a tweezers, however, the component parts can be removed from the mount.** Given the employment of sound-absorbing material, sound-sensitive component parts can be protected against injurious unwanted signals. The disadvantages of the prior art thus no longer occur.

Goschke, Col. 1, ll. 36-49 (emphasis added). **The use of tweezers to remove the component parts is precisely one of the problems Applicants' disclosure seeks to avoid.** The force applied by tweezers can damage the precious component parts, adversely affecting their performance and functionality. In Applicants' disclosure, the jacket surrounds the housing of the transducer and is installed to surround the housing before the transducer is assembled into the hearing aid or telecommunications system. In this manner, the internal components of the transducer are less prone to damage because the jacket provides structural rigidity and protection against forces applied by handling devices such as tweezers.

In Goschke, the mount includes elastic, sound-damping nubs 14 that are located inside the walls of the mount. These nubs facilitate insertion and removal of component parts with tweezers. Col. 1, ll. 40-45; col. 2, ll. 24-26. Goschke explicitly states: "An object of the present invention is to construct a mount for component parts of a hearing aid that may also differ in size that **enables an effortless replacement of component parts** and that nonetheless retains the inserted component parts." Col. 1, ll. 24-26 (emphasis added). The mount is fixed to the housing shell of the hearing aid so as to facilitate insertion or removal of ear phone 4 or microphone 6. Thus, the mount in Goschke is not to provide protection against damage during assembly of a transducer into a hearing aid or telecommunications system, but rather to enable an effortless replacement of the component parts themselves (without the mount) such as by grabbing them with tweezers. Goschke thus fails to teach a jacket adapted to enhance the

structural integrity of a transducer and to protect the transducer's housing and its internal components from damage due to handling. In fact, Applicants' invention overcomes the disadvantage taught in Goschke by requiring a jacket to be installed before the transducer is assembled into a hearing aid or telecommunications system. For this reason, Claims 2, 20, 25, 31, 36, and 42 are patentable over Goschke.

The claims also call for a jacket having a thickness and a mass to suppress vibrational feedback. Goschke does not disclose a mount that is designed to suppress vibrational feedback. In fact, Goschke discloses suppressing acoustical feedback only through the use of sound-absorbing material in the mount: "In an embodiment of the invention wherein the elastic material [used inside the mount] is also sound-absorbing, **acoustic feedback** effects are avoided even better than hitherto." Col. 1, ll. 33-35 (emphasis added). Goschke makes no mention whatsoever of suppressing vibrational feedback. By contrast, the jacket of the present invention is adapted to have a thickness and a mass that suppresses the undesirable effects of vibrational feedback in addition to acoustic feedback. For example, Applicants disclosure states: "In the disclosed embodiment, the jacket 20 is stainless steel having a thickness of between approximately 0.05 mm and 0.2 mm" (these are exemplary figures) and "the additional mass from the jacket 20 reduces the vibration of the receiver 10, which decreases the vibrational feedback to the microphone to which the receiver 10 is coupled." Page 5, ll. 4-5, 11-13. Because the ear phone or microphone in Goschke is suspended inside the mount by the nubs, the mass of the mount would have no effect on reducing vibrational feedback.

For at least the foregoing reasons, Applicants respectfully submit that independent claims 2, 26, 31, 42, and 54 are patentable over Goschke. In addition, the dependent claims are also patentable over Goschke for at least the reason that the claims from which they depend are patentable thereover and for at least the following additional reasons.

To the extent that the Examiner has doubts regarding the patentability of the independent claims rejected in view of Goschke, which he should not have, the Examiner **MUST** consider the arguments listed below and earlier presented on June 14, 2004, with respect to various other claims.

Regarding **Claim 13**, Claim 13 has calls for the jacket being preconfigured to be press-fit directly onto the housing. The mount disclosed in Goschke is not press-fit directly onto a

housing. The Office Action asserts that press-fitting is well known, however, Goschke still does not disclose directly press-fitting the jacket onto the housing. Therefore, a prima facie case of obviousness has not been established. Accordingly, Claim 13 is patentable over Goschke for at least this additional reason.

Regarding **claims 3-8, 27, 32, 34, and 43**, the Office Action acknowledges that Goschke does not disclose a polymeric material. In fact, Goschke does not disclose a jacket made of stainless steel, soft magnetic material, polymer, Kapton, or epoxy, or a jacket that includes silicone. Applicants' disclosure teaches that the selection of these materials is to achieve at least the following advantages: structural integrity and electromagnetic shielding. Goschke discloses the use of elastic nubs fixed to the interior of the mount in order to achieve acoustic dampening, but Goschke contains no disclosure whatsoever of fabricating the mount from a material to achieve structural integrity or electromagnetic shielding. In fact, Goschke was not concerned with preserving the structural integrity of the ear phone or microphone (and in fact explicitly discloses that the ear phone/microphone can be removed by tweezers—a disadvantage Applicants' disclosure explicitly seeks to overcome) or with shielding the working components of the ear phone or microphone from the effects of EMI (rather Goschke only mentions acoustical dampening through the use of nubs in the mount). Rather, the stated objective in Goschke was to provide a mount that facilitated easy removal and installation of components into and out of the mount. In short, there is no motivation or suggestion in Goschke to fabricate a jacket as claimed using material that provides structural integrity or EMI shielding. The fact that the claimed materials may be known in the art does not mean, absent some suggestion or motivation in the prior art, that it would have been obvious to use such materials in the claimed jacket to achieve the claimed structural integrity or EMI shielding. There is no such suggestion or motivation found in Goschke or in the general knowledge of one of ordinary skill in the art.

Regarding Claims **17-19, 30, 40-41, and 45-46**, the Office Action acknowledges that Goschke does not disclose a specific shape such as D-, cylindrical-, or trapezium-shaped, but states that Goschke does not restrict to any specific shapes and therefore it would have been obvious to use any shape. These claims call for a jacket (as opposed to the transducer itself) having a specific shape. Applicants argue that Claims 17-19, 30, 40-41, and 45-46 are not obvious in view of Goschke because the claimed jacket shapes are not arbitrary or merely a

matter of design choice. Rather, the selected shapes further one of the advantages of the claimed invention, *i.e.*, enhancing the structural integrity of the transducer which the jacket protects. For example, Applicants state on page 7, lines 26-28: “In the embodiment of FIGS. 7A and 7B and FIGS. 8A and 8B, the cylindrical jacket 180 and the D-shaped jacket 190, respectively, **provides structural integrity** and also possible electromagnetic shielding.” As argued above, Goschke was not concerned with preserving the structural integrity of component parts, but rather with enabling the effortless replacement of the component parts. Therefore, Claims 17-19, 30, 40-41, and 45-46 are believed to be patentable over Goschke for at least the foregoing reasons.

Regarding **Claims 14-15 and 33**, the Office Action acknowledges that Goschke does not disclose a jacket welded or adhered to the housing but states that welding and adhering are well known in the art and therefore it would have been obvious to use welding or adhering techniques to bond the jacket and the housing. Here, Goschke actually *teaches away* from using welding or adhering or any other methodology which would fixedly secure the component part to the mount, because welding or adhering would be totally contrary to the teachings of Goschke. Goschke repeatedly states that its disclose system “enables an effortless replacement of component parts” and therefore it is critical in Goschke that the component part be removably inserted into the mount. Welding or adhering the component part to the mount would totally defeat Goschke’s stated objective, and it would therefore not have been obvious to one skilled in the art at the time of the invention to take the mount disclosed in Goschke and weld it to a component part. Accordingly, Claims 14-15 and 33 are believed to be patentable over Goschke for at least the foregoing reasons.

Regarding independent **Claims 20, 31, and 54**, the Office Action asserts that Goschke discloses “an acoustical dampening material (14, 14.1),” however that is **not** what these claims call for. Claim 20 calls for “a layer of acoustical dampening material sandwiched **directly** between said at least part of said jacket and said housing.” Claim 31 calls for a “at least one of said sections of said jacket contacts a corresponding one of said four of six sides directly or via a layer of dampening material sandwiched between said at least one of said sections of said jacket and said corresponding one of said four of said six sides.” Claim 54 calls for “at least part of said jacket contacting a majority of the surface of at least said two mutually adjacent sides of said housing directly or via a layer of acoustical dampening material disposed between said at least

part of said jacket and said housing.” **Goschke does not disclose such a layer**, and therefore does not render obvious claims 20, 31, or 54. The nubs 14, 14.1 clearly do not constitute a layer of acoustical dampening material sandwiched directly between part of a jacket and a housing.

Regarding dependent **claim 24**, the Office Action asserts that “Goschke discloses the transducer is receiver (4) or microphone (6).” However, this is **not** what claim 24 calls for. Claim 24 calls for “further in combination with a second transducer having a second housing, **said jacket surrounding at least a portion of said housing of said transducer and at least a portion of said second housing of said second transducer.**” Goschke **clearly** discloses no such combination. The ear phone 4 and the microphone 6 are clearly shown in all of the Figures as being separate structures, and there is no jacket surrounding any portion of **both** the ear phone 4 **and** the microphone 6.

Regarding independent **Claim 26**, the Office Action concedes that Goschke does not disclose locating a printed circuit board at least partially within a gap between a jacket section and a housing side, but argues that “the printed circuit board is well known” and therefore it would have been obvious to “use the well known printed circuit board for easily connecting electrical components and assembly.” First of all, Applicants note that the Office Action does not identify where the alleged “gap” would be in Goschke, other than to cite generally to FIG. 1 of Goschke. However, it is clear from FIG. 1 that **there is no gap in Goschke within which a PCB can be placed because of all the nubs 14 located on the insides of the walls 9**. Indeed, Goschke shows connecting cables 11 leading away from the ear phone 4 and the microphone 6 for connection to electronics outside of the ear phone 4 and the microphone 6. Second, Goschke actually teaches away from placing a PCB in a gap between the walls 9 and the housing of the ear phone 4 or the microphone 6, and indeed, the presence of all the nubs 14, 14.1 would make it impossible to place a PCB there. Third, the presence of a PCB would also destroy the intended purpose of the nubs, which is to dampen sound. Fourth, the Examiner is also improperly using hindsight reconstruction to reject claim 26. Only Applicants’ disclosure teaches placement of a PCB in a gap between a jacket and housing portions as claimed. Therefore, claim 26 is believed to be patentable over Goschke.

Regarding **claim 28**, the Office Action does not address claim 28 though it purports to reject claim 28. Claim 28 calls for the PCB to be flexible, and there is no teaching or suggestion in Goschke to locate a flexible PCB in a gap between jacket and housing portions.

Regarding **Claim 36**, the Office Action asserts that “epoxy dampening material is well known” and therefore “it would have been obvious to a one ordinary skill in the art at the time of the invention was made to use this well known material.” However, the Office Action ignores the claim language. Claim 36 calls for “an epoxy jacket encapsulating said housing so as to contact at least two mutually adjacent ones of said sides thereof, said epoxy jacket being adapted to enhance the structural integrity of said acoustic receiver and protect said housing and said means for converting from damage due to handling, said epoxy jacket having a mass adapted to suppress vibrational feedback.” Goschke clearly does not disclose an epoxy jacket encapsulating said housing so as to contact at least two mutually adjacent ones of said sides thereof, said epoxy jacket being adapted to enhance the structural integrity of said acoustic receiver and protect said housing and said means for converting from damage due to handling, said epoxy jacket having a mass adapted to suppress vibrational feedback, and actually teaches away from such a jacket, as discussed above in connection with claims 2, 26, 31, 42, and 54.

Regarding **claims 37 and 47**, the Office Action does not address claim 37, which calls for “a **printed circuit board located within said epoxy jacket**, said printed circuit board including electronics for processing said input audio signal,” or claim 47, which calls for “a printed circuit board located within said dampening material, said printed circuit board including electronics for processing said input audio signal.” Goschke does not teach or suggest either arrangement. The Office Action generally asserts that “the printed circuit board is well known,” however, this does not establish a *prima facie* case of obviousness and it ignores the claim language specifying the location of the PCB. There is not even a suggestion in Goschke to locate a PCB where the nubs 14 are located, and in fact the cables 11 lead away from the ear phone and microphone, teaching that further electronics are located outside of the ear phone and microphone, not within. In any event, because the Office Action failed to address claims 37 and 47, Applicants request that this rejection be withdrawn.

C. Applicants Traverse The Rejections Based on The Arndt Reference

Claims 2, 11, 12, 25, and 31 were rejected under Section 102(b) as being anticipated by U.S. Patent No. 5,204,917 (Arndt).

Regarding independent **Claims 2 and 25**, Arndt does not disclose a jacket having at least three sections for engaging three of said sides [of said housing], said three sections being generally flat and **lying on** respective ones of said sides, thereby **enhancing the structural integrity of said acoustic receiver and protecting said housing and said converting means from damage due to handling**, at least two mutually adjacent ones of said three sections **contacting** corresponding ones of said sides, **said jacket having a thickness and a mass adapted to suppress vibrational feedback**, as called for by claim 2. Nor does Arndt disclose a jacket having at least three sections for engaging at least three of said sides, said three sections being generally flat and **lying on** respective ones of said sides, **thereby enhancing the structural integrity of said microphone and protecting said housing and said means for converting from damage due to handling**, **said jacket having a thickness and a mass adapted to suppress vibrational feedback**, as called for by claim 25.

The Office Action identifies the claimed jacket as corresponding to the *combination of* the standard magnetic shield 30 and the resilient sleeve 34 shown in Arndt. This is improper; the Examiner must select either the shield 30 or the resilient sleeve 34 as allegedly corresponding to the claimed jacket. Applicants shall address each component in turn. In any event, even the combination of the shield 30 and sleeve 34 fails to disclose each and every element of claims 2 and 25.

First, no part of the resilient sleeve 34 is lying on the receiver 22, except perhaps for the side on which the metal sound tube 32 is located; however that is only one side, not “at least two mutually adjacent ones” as called for by claim 2. Therefore, that leaves only the standard magnetic shield 30.

The standard magnetic shield 30 does not: (a) enhance the structural integrity of the receiver; (b) protect the housing and internal receiver components from damage due to handling; or (c) have a thickness and a mass adapted to suppress vibrational feedback. The purpose of the magnetic shield 30 is to protect the receiver from undesirable electromagnetic interference.

Second, the object of Arndt is not to enhance structural integrity of an acoustic receiver, or to protect the housing and internal components from damage due to handling, or to suppress vibrational feedback. Rather, the object of Arndt is “to provide a modular hearing aid in which the major components are individually packaged and yet are ruggedly connected together in a manner which allows for **ease of assembly and speedy repair**.” Col. 1, ll. 51-55. The standard magnetic shield 30 provides partial magnetic shielding (two sides are exposed and not shielded) for the receiver, and the “resilient” sleeve 34 has five projections 36, 38 capped by a rounded or square tip block 40, 42. The purpose of the sleeve 34 is to facilitate the stated object of Arndt, i.e., ease of assembly and speedy repair; and the purpose of the capped projections is to assist “to acoustically isolate said receiver from the remainder of said hearing aid” (see claim 4 of Arndt). There is no disclosure in Arndt that the sleeve 34 (and certainly not the shield 30) enhances the structural integrity of the receiver (nor could it because the sleeve 34 is made of rubber); protects the housing and internal components from damage due to handling (Arndt is concerned with easy of assembly not handling damage avoidance); or suppressing vibrational feedback (in fact, claim 4 of Arndt recites that the resilient protection means is for “assisting to acoustically isolate said receiver from the remainder of said hearing aid”).

Regarding independent **claim 31**, Arndt does not teach or disclose a jacket having a rectangular cross-section and sections for closely interfitting with four of said six sides, thereby **enhancing the structural integrity** of said acoustic receiver and protecting said housing and said converting means from damage due to handling, said jacket having a thickness and a mass adapted to **suppress vibrational feedback**, wherein at least one of said sections of said jacket **contacts** a corresponding one of said four of said six sides directly or via a **layer of dampening material** sandwiched between said at least one of said sections of said jacket and said corresponding one of said four of said six sides, for at least the reasons provided above. In addition, the Office Action does not identify the alleged “layer of dampening material” that is supposedly disclosed in Arndt. Therefore, the Examiner has failed to make out a prima facie case of lack of novelty and should withdraw this rejection. Indeed, the shield 30 is clearly not a “layer of dampening material,” nor does the sleeve 34 correspond to the claimed jacket for at least the reasons discussed above.

For at least the foregoing reasons, Applicants believe that Claims 2, 11-12, 25, and 31 are patentable over Arndt.

V. THE OFFICE ACTION DOES NOT PROPERLY RESPOND TO APPLICANTS' ARGUMENTS

In the Office Action, the Examiner indicated that Applicants' arguments in their Response and Amendment filed September 28, 2005, have been fully considered but were not persuasive. **However, Applicants' September 28, 2005, arguments were directed to the Nepomuceno reference, the only reference used to reject the then-pending claims.** The Office Action then proceeds to "respond" to arguments that Applicants never made by pointing out alleged distinctions in Arndt and Goschke, **references that were not used to reject the claims in the June 28, 2005, Office Action.** This is the second time the Examiner has left Applicants guessing as to whether the Examiner actually considered at all Applicants' arguments with respect to: (a) Goschke in their Amendment and Response filed June 14, 2004; or (b) Nepomuceno in their Amendment and Response filed September 28, 2005. Applicants urge the Examiner to respond to Applicants' arguments as required by Patent Office procedure, and to withdraw the finality of the instant Office Action and respond to Applicants' arguments so that Applicants are not left guessing as to their status. Otherwise, Applicants are left guessing as to the status of these prior-art references.

It is believed that all pending claims are in condition for allowance, and favorable action toward that end is requested. The Examiner is invited to contact the undersigned by telephone to the extent there are any matters which may be resolved or clarified.

VI. CONCLUSION

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

No fee is believed to be due. The Commissioner is authorized to deduct any additional fees required (except for payment of the issue fee) from or to credit any overpayment to Jenkins & Gilchrist, P.C. Deposit Account No. 10-0447, Order No. 47161-00018USPT.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Justin Swindells', is written over a horizontal line.

Justin Swindells
Reg. No. 48,733
JENKENS & GILCHRIST, P.C.
225 West Washington Street, Suite 2600
Chicago, Illinois 60606-3418
(312) 425-3900 (Telephone)
(312) 425-3909 (Telecopy)

Date: February 28, 2006

ATTORNEYS FOR APPLICANTS